

House Bill 147 (AS PASSED HOUSE AND SENATE)

By: Representatives Mills of the 25th, Sheldon of the 105th, Fleming of the 117th, Coan of the 101st, Ralston of the 7th, and others

A BILL TO BE ENTITLED
AN ACT

1 To provide a short title; to provide for legislative findings and purpose; to amend Chapter 9A
2 of Title 31 of the Official Code of Georgia Annotated, relating to the "Woman's Right to
3 Know Act," so as to offer pregnant females an opportunity to undergo an ultrasound if such
4 imaging is available and allow the woman to view the sonogram and listen to the fetal
5 heartbeat, if present; to change certain provisions relating to voluntary and informed consent
6 to abortions; to require certain information be made available by the Department of Human
7 Resources; to change certain provisions relating to reporting requirements; to provide for
8 civil and professional penalties; to provide for construction; to provide for severability; to
9 provide for an effective date; to provide for related matters; to repeal conflicting laws; and
10 for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 **SECTION 1.**

13 This Act shall be known and may be cited as the "Woman's Ultrasound Right to Know Act."

14 **SECTION 2.**

15 (a) The General Assembly finds that:

16 (1) It is essential to the psychological and physical well-being of a woman considering
17 an abortion that she receive complete and accurate information on the reality and status
18 of her pregnancy and of her unborn child;

19 (2) The decision to abort "is an important and often a stressful one, and it is desirable and
20 imperative that it be made with full knowledge of its nature and consequences." *Planned*
21 *Parenthood v. Danforth*, 428 U.S. 52, 67 (1976); and

22 (3) The knowledgeable exercise of a woman's decision to have an abortion depends on
23 the extent to which the woman receives sufficient information to make an informed
24 choice between two alternatives: giving birth or having an abortion.

25 (b) Based on the findings in subsection (a) of this section, it is the purpose of this Act to:

(1) Ensure that every woman considering an abortion receive complete information on the reality and status of her pregnancy and of her unborn child and that every woman submitting to an abortion do so only after giving her voluntary and informed consent to the abortion procedure;

(2) Protect unborn children from a woman's uninformed decision to have an abortion;

(3) Reduce "the risk that a woman may elect an abortion, only to discover later, with devastating psychological consequences, that her decision was not fully informed" *Planned Parenthood v. Casey*, 505 U.S. 833, 882 (1992); and

(4) Adopt the construction of the term "medical emergency" accepted by the United States Supreme Court in *Planned Parenthood v. Casey*, 505 U.S. 833 (1992).

SECTION 3.

Chapter 9A of Title 31 of the Official Code of Georgia Annotated, relating to the "Woman's Right to Know Act," is amended by revising Code Section 31-9A-3, relating to voluntary and informed consent to abortion, as follows:

"31-9A-3.

No abortion shall be performed in this state except with the voluntary and informed consent of the female upon whom the abortion is to be performed. Notwithstanding any provision of law to the contrary, except in the case of a medical emergency, consent to an abortion is voluntary and informed if and only if:

(1) The female is told the following, by telephone or in person, by the physician who is to perform the abortion, by a qualified agent of the physician who is to perform the abortion, by a qualified agent of a referring physician, or by a referring physician, at least 24 hours before the abortion:

(A) The particular medical risks to the individual patient associated with the particular abortion procedure to be employed, when medically accurate;

(B) The probable gestational age of the unborn child at the time the abortion would be performed; and

(C) The medical risks associated with carrying the unborn child to term.

The information required by this paragraph may be provided by telephone without conducting a physical examination or tests of the patient, in which case the information required to be provided may be based on facts supplied to the physician by the female and whatever other relevant information is reasonably available to the physician. Such information may not be provided by a tape recording but must be provided during a consultation in which the physician or a qualified agent of the physician is able to ask questions of the female and the female is able to ask questions of the physician or the physician's qualified agent. If in the medical judgment of the physician any physical

examination, tests, or other information subsequently provided to the physician requires a revision of the information previously supplied to the patient, that revised information shall be communicated to the patient prior to the performance of the abortion. Nothing in this Code section may be construed to preclude provision of required information in a language understood by the patient through a translator;

(2) The female is informed, by telephone or in person, by the physician who is to perform the abortion, by a referring physician, or by a qualified agent of ~~either the~~ physician who is to perform the abortion at least 24 hours before the abortion:

(A) That medical assistance benefits may be available for prenatal care, childbirth, and neonatal care;

(B) That the father will be liable pursuant to subsection (a) of Code Section 19-7-49 to assist in the support of her child; ~~and~~

(C) How to obtain a list of health care providers, facilities, and clinics that offer to perform ultrasounds free of charge; such list shall be arranged geographically and shall include the name, address, hours of operation, and telephone number of each listed entity; and

~~(C)~~ (D) That she has the right to review the printed materials described in Code Section 31-9A-4 and that these materials are available on a state sponsored website at a stated website address. The physician or the physician's qualified agent shall orally inform the female that materials have been provided by the State of Georgia and that they describe the unborn child, list agencies that offer alternatives to abortion, and contain information on fetal pain. If the female chooses to view the materials other than on the website, they shall either be given to her at least 24 hours before the abortion or mailed to her at least 72 hours before the abortion by certified mail, restricted delivery to addressee.

The information required by this paragraph may be provided by a tape recording if provision is made to record or otherwise register specifically whether the female does or does not choose to review the printed materials other than on the website;

(3) The female certifies in writing, prior to the abortion, that the information described in paragraphs (1) and (2) of this Code section has been furnished her and that she has been informed of her opportunity to review the information referred to in subparagraph ~~(C)~~ (D) of paragraph (2) of this Code section; ~~and~~

(4) For all cases in which an ultrasound is performed prior to conducting an abortion or a pre-abortion screen:

(A) The woman shall at the conclusion of the ultrasound be offered the opportunity to view the fetal image and hear the fetal heartbeat. The active ultrasound image shall be of a quality consistent with standard medical practice in the community, contain the

dimensions of the unborn child, and accurately portray the presence of external members and internal organs, including but not limited to the heartbeat, if present or viewable, of the unborn child. The auscultation of fetal heart tone shall be of a quality consistent with standard medical practice in the community; and

(B) At the conclusion of these actions and prior to the abortion, the female certifies in writing that:

(i) She was provided the opportunity described in subparagraph (A) of this paragraph;

(ii) Whether or not she elected to view the sonogram; and

(iii) Whether or not she elected to listen to the fetal heartbeat, if present; and

~~(4)~~(5) Prior to the performance of the abortion, the physician who is to perform the abortion or the physician's qualified agent receives a copy of the written ~~certification~~ certifications prescribed by ~~paragraph~~ paragraphs (3) and (4) of this Code section and retains ~~it~~ them on file with the female's medical record for at least three years following the date of receipt."

SECTION 4.

Said chapter is further amended by revising subsection (a) of Code Section 31-9A-4, relating to information to be made available by the Department of Human Resources, format requirements, availability, and requirements for website, as follows:

"(a) ~~Not later than August 8, 2005, the~~ The Department of Human Resources shall cause to be published in English and in each language which is the primary language of 2 percent or more of the state's population and shall cause to be available on the state website provided for in subsection (d) of this Code section the following printed materials in such a way as to ensure that the information is easily comprehensible:

(1) Geographically indexed materials designed to inform the female of public and private agencies and services available to assist a female through pregnancy, upon childbirth, and while the child is dependent, including adoption agencies, which shall include a comprehensive list of the agencies available, a description of the services they offer, and a description of the manner, including telephone numbers and website addresses, in which they might be contacted or, at the option of such department, printed materials including a toll-free, 24 hour telephone number which may be called to obtain, orally or by a tape recorded message tailored to the ZIP Code entered by the caller, such a list and description of agencies in the locality of the caller and of the services they offer;

(1.1) Geographically indexed materials designed to inform the female of public and private facilities and services available to assist a female with obtaining an ultrasound which shall include a comprehensive list of the facilities available, a description of the

services they offer, and a description of the manner, including telephone numbers and website addresses, in which they might be contacted or, at the option of such department, printed materials including a toll-free, 24 hour telephone number which may be called to obtain, orally or by a tape recorded message tailored to the ZIP Code entered by the caller, such a list and description of facilities in the locality of the caller and of the services they offer;

(2) Materials designed to inform the female of the probable anatomical and physiological characteristics of the unborn child at two-week gestational increments from the time when a female can be known to be pregnant to full term, including any relevant information on the possibility of the unborn child's survival and pictures representing the development of unborn children at two-week gestational increments, provided that any such pictures must contain the dimensions of the fetus and must be factually accurate for the stage of pregnancy depicted. The materials shall be objective, nonjudgmental, and designed to convey only factually accurate scientific information about the unborn child at the various gestational ages. The material shall also contain objective information describing the methods of abortion procedures commonly employed, the medical risks commonly associated with each such procedure, the possible detrimental psychological effects of abortion, and the medical risks commonly associated with carrying a child to term; and

(3) Materials with the following statement concerning unborn children of 20 weeks' or more gestational age:

'By 20 weeks' gestation, the unborn child has the physical structures necessary to experience pain. There is evidence that by 20 weeks' gestation unborn children seek to evade certain stimuli in a manner which in an infant or an adult would be interpreted to be a response to pain. Anesthesia is routinely administered to unborn children who are 20 weeks' gestational age or older who undergo prenatal surgery.'

The materials shall be objective, nonjudgmental, and designed to convey only accurate scientific information about the unborn child at the various gestational ages."

SECTION 5.

Said chapter is further amended by revising subsection (a) of Code Section 31-9A-6, relating to reporting requirements, as follows:

~~"(a) Not later than August 8, 2005, the~~ The Department of Human Resources shall prepare a reporting form for physicians performing abortions in a health facility licensed as an abortion facility by the Department of Human Resources containing a reprint of this chapter and listing:

(1) The number of females to whom the physician provided the information described in paragraph (1) of Code Section 31-9A-3; of that number, the number to whom the information was provided by telephone and the number to whom the information was provided in person; and of each of those numbers, the number to whom the information was provided by a referring physician and the number to whom the information was provided by a physician who is to perform the abortion;

(2) The number of females to whom the physician or a qualified agent of the physician provided the information described in paragraph (2) of Code Section 31-9A-3; of that number, the number to whom the information was provided by telephone and the number to whom the information was provided in person; of each of those numbers, the number to whom the information was provided by a referring physician and the number to whom the information was provided by a physician who is to perform the abortion; and of each of those numbers, the number to whom the information was provided by the physician and the number to whom the information was provided by a qualified agent of the physician; ~~and~~

(3) The number of females who availed themselves of the opportunity to obtain a copy of the printed information described in Code Section 31-9A-4, other than on the website, and the number who did not; and of each of those numbers, the number who, to the best of the reporting physician's information and belief, went on to obtain the abortion; and

(4) The number of females who were provided the opportunity to view the fetal image and hear the fetal heartbeat; of that number, the number who elected to view the sonogram and the number who elected to listen to the fetal heartbeat, if present."

SECTION 6.

Said chapter is further amended by adding a new Code section to read as follows:

"31-9A-6.1.

In addition to whatever remedies are available under the common or statutory law of this state, failure to comply with the requirements of this chapter shall be reported to the Composite State Board of Medical Examiners for disciplinary action."

SECTION 7.

Nothing in this Act shall be construed as creating or recognizing a right to abortion. It is not the intention of this Act to make lawful an abortion that is currently unlawful.

SECTION 8.

In the event any section, subsection, sentence, clause, or phrase of this Act shall be declared or adjudged invalid or unconstitutional, such adjudication shall in no manner affect the other

1 sections, subsections, sentences, clauses, or phrases of this Act, which shall remain of full
2 force and effect as if the section, subsection, sentence, clause, or phrase so declared or
3 adjudged invalid or unconstitutional were not originally a part hereof. The General
4 Assembly declares that it would have passed the remaining parts of this Act if it had known
5 that such part or parts hereof would be declared or adjudged invalid or unconstitutional.

6 **SECTION 9.**

7 This Act shall become effective on July 1, 2007.

8 **SECTION 10.**

9 All laws and parts of laws in conflict with this Act are repealed.